



## Senate

General Assembly

**File No. 907**

January Session, 2009

Substitute Senate Bill No. 995

*Senate, May 5, 2009*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING BENEFICIAL REUSE, RECYCLING, ILLEGAL DUMPING AND MUNICIPAL DEMONSTRATION PROJECTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-209f of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) The Commissioner of Environmental Protection may issue a  
4 general permit for a category of processing or beneficial use of solid  
5 waste when used in a manufacturing process to make a product or as  
6 an effective substitute for a commercial product, provided: (1) Such  
7 permit does not allow an activity for which an individual permit has  
8 been issued; (2) the issuance of the general permit is not inconsistent  
9 with the requirements of the federal Resource Conservation and  
10 Recovery Act; (3) the solid wastes included in the category are  
11 proposed for the same or substantially similar operations and have the  
12 same or similar physical character and chemical composition; (4) the  
13 solid wastes included in the category are proposed for the same or  
14 substantially similar beneficial use or processing activities; and (5) the

15 commissioner finds that the activities in the category can be  
16 adequately regulated using standardized conditions without harming  
17 or presenting a threat of harm to public health and safety or the  
18 environment. [The commissioner's authority to issue a general permit  
19 shall not apply to the reuse of hazardous waste as defined in section  
20 22a-115.] The issuance of the general permit shall be governed by  
21 procedures established in subsection [(q)] (i) of section 22a-208a. The  
22 general permit may require any person or municipality proposing to  
23 conduct any activity under a general permit to register such activity on  
24 a form prescribed by the commissioner.

25 (b) (1) The commissioner may issue individual authorizations for  
26 the beneficial use of solid waste in a manufacturing process to make a  
27 product or as an effective substitute for a commercial product  
28 provided (A) such authorization does not allow an activity for which  
29 an individual or general permit has been issued, (B) such authorization  
30 is not inconsistent with the requirements of the federal Resource  
31 Conservation and Recovery Act (42 USC 6901 et seq.), and (C) the  
32 commissioner finds that such solid waste can be reused without  
33 harming or presenting a threat of harm to public health, safety or the  
34 environment.

35 (2) The commissioner shall establish guidelines protective of public  
36 health, safety and the environment for authorizations made in  
37 accordance with this subsection and shall give public notice on the  
38 Department of Environmental Protection's Internet web site of such  
39 guidelines, or any subsequent revision of the guidelines, with an  
40 opportunity for submission of written comments by interested persons  
41 for a period of thirty days following the publication of the notice. The  
42 commissioner shall post a response to any comments received on the  
43 Department of Environmental Protection's Internet web site.

44 (3) An applicant for such authorization shall submit information on  
45 forms prescribed by the commissioner and any additional information  
46 required by the commissioner. The commissioner may direct the  
47 applicant to pay a fee of not more than five thousand dollars at the

48 time of application, in accordance with the guidelines established  
49 under subdivision (2) of this subsection, except that no such fee shall  
50 be charged to a municipality.

51 (4) Notwithstanding section 22a-208a, as amended by this act, or  
52 any regulations adopted pursuant to section 22a-209, the issuance or  
53 renewal of an authorization under this subsection, or a modification of  
54 an authorization under this subsection if such modification is sought  
55 by the holder of an authorization, shall conform to the following  
56 procedures: (A) The commissioner shall publish a notice of intent to  
57 issue an authorization on the Department of Environmental  
58 Protection's Internet web site. Such notice shall include: (i) The name  
59 and mailing address of the applicant and the address of the location of  
60 the proposed activity; (ii) the application number; (iii) the tentative  
61 decision regarding the application; (iv) the type of authorization  
62 sought, including a reference to the applicable statute or regulation; (v)  
63 a description of the location of the proposed activity and any natural  
64 resources affected thereby; (vi) the name, address and telephone  
65 number of any agent of the applicant from whom interested persons  
66 may obtain copies of the application; (vii) the length of time available  
67 for submission of public comments to the commissioner; and (viii)  
68 such additional information as the commissioner deems necessary to  
69 comply with any provision of this title or regulations adopted  
70 pursuant to this title, or with the federal Clean Air Act, federal Clean  
71 Water Act or federal Resource Conservation and Recovery Act. There  
72 shall be a comment period of thirty days following the publication of  
73 such notice during which interested persons may submit written  
74 comments to the commissioner. (B) The commissioner shall post a  
75 response to any comments received on the Department of  
76 Environmental Protection's Internet web site. (C) The commissioner  
77 may approve or deny such authorization based upon a review of the  
78 submitted information. Any authorization issued pursuant to this  
79 section shall define clearly the activity covered by such authorization  
80 and may include such conditions or requirements as the commissioner  
81 deems appropriate, including, but not limited to, operation and  
82 maintenance requirements, management practices, reporting

83 requirements and a specified term.

84 (5) The commissioner may suspend or revoke an authorization and  
85 may modify an authorization if such modification is not sought by the  
86 holder of an authorization, in accordance with the provisions of section  
87 4-182 and the applicable rules of practice adopted by the department.

88 Sec. 2. Section 22a-241b of the general statutes is repealed and the  
89 following is substituted in lieu thereof (*Effective October 1, 2009*):

90 (a) On or before February 1, 1988, the Commissioner of  
91 Environmental Protection shall adopt regulations in accordance with  
92 the provisions of chapter 54 designating items that are required to be  
93 recycled. The commissioner may designate other items as suitable for  
94 recycling and amend said regulations accordingly.

95 (b) Any [item designated for recycling pursuant to subsection (a) of  
96 this section] recyclable item shall be recycled by a municipality within  
97 three months of the establishment of service to such municipality by a  
98 regional processing center or local processing system.

99 (c) [On and after January 1, 1991, (1) each] (1) Each person who  
100 generates solid waste from residential property shall, in accordance  
101 with subsection (f) of section 22a-220, separate from other solid waste  
102 [the] all recyclable items, [designated for recycling pursuant to  
103 subsection (a) of this section] and (2) every other person who generates  
104 solid waste shall, in accordance with subsection (f) of section 22a-220,  
105 make provision for and cause the separation from other solid waste of  
106 [the] all recyclable items. [designated for recycling pursuant to  
107 subsection (a) of this section] Each person described in subdivisions (1)  
108 and (2) of this subsection shall separate any recyclable items by placing  
109 all such items in a collection receptacle that is separate from any  
110 receptacle containing other solid waste. No person shall combine  
111 previously separated recyclable items with other solid waste.

112 (d) On and after October 1, 2009, no person shall enter into a  
113 contract for the collection of solid waste without also making provision

114 for the collection of recyclable items. Any person offering solid waste  
115 or recyclable item collection services shall provide each customer with  
116 clear written instructions concerning the separation of recyclable items  
117 as provided in subsection (c) of this section.

118 (e) For the purposes of this section, "recyclable item" means an item  
119 designated for recycling in accordance with subsection (a) of this  
120 section.

121 Sec. 3. Section 22a-248 of the general statutes is repealed and the  
122 following is substituted in lieu thereof (*Effective October 1, 2009*):

123 As used in sections 22a-247 to 22a-249, inclusive, 22a-250, as  
124 amended by this act, and 22a-251:

125 (1) "Commissioner" means the Commissioner of Environmental  
126 Protection or his designated agent, as defined in subsection (b) of  
127 section 22a-2;

128 (2) "Department" means the Department of Environmental  
129 Protection;

130 (3) "Person" means person, as defined in subsection (c) of section  
131 22a-2;

132 (4) "Litter" means any discarded, used or unconsumed substance or  
133 waste material, whether made of aluminum, glass, plastic, rubber,  
134 paper, or other natural or synthetic material, or any combination  
135 thereof, including, but not limited to, any bottle, jar or can, or any top,  
136 cap or detachable tab of any bottle, jar or can, any unlighted cigarette,  
137 cigar, match or any flaming or glowing material or any garbage, trash,  
138 refuse, debris, rubbish, grass clippings or other lawn or garden waste,  
139 newspaper, magazines, glass, metal, plastic or paper containers or  
140 other packaging or construction material which has not been deposited  
141 in a litter receptacle;

142 (5) "Litter bag" means a bag, sack or other container made of any  
143 material which is large enough to serve as a receptacle for litter inside

144 a motor vehicle or watercraft of any person and is not necessarily  
145 limited to the state recommended litter bag but shall be similar in size  
146 and capacity;

147 (6) "Litter receptacle" means a receptacle suitable for the depositing  
148 of litter;

149 (7) "Vehicle" includes every device capable of being moved upon a  
150 public highway and in, upon or by which any person or property is or  
151 may be transported or drawn upon a public highway, except devices  
152 moved by human or animal power or used exclusively upon stationary  
153 rails or tracks;

154 (8) "Watercraft" means any boat, ship, vessel, barge or other floating  
155 craft;

156 (9) "Public place" means any area that is used or held out for use by  
157 the public whether owned or operated by public or private interests;

158 (10) "Recycling" means the process of sorting, cleansing, treating  
159 and reconstituting waste or other discarded material for the purpose of  
160 using the altered form;

161 (11) "Recycling center" means any facility at which recyclable  
162 material is processed or stored, separated or prepared for reuse or  
163 resale;

164 (12) "Dump" means to discard (A) more than one cubic foot in  
165 volume of litter at one time or (B) furniture, garbage bags or contents  
166 thereof or other similar materials. [Material which has been placed at a  
167 location with an intent to leave it indefinitely at such location, or  
168 material which has not been removed from a location within forty-five  
169 days, is deemed discarded.]

170 Sec. 4. Section 22a-250 of the general statutes is repealed and the  
171 following is substituted in lieu thereof (*Effective October 1, 2009*):

172 (a) No person shall throw, scatter, spill or place or cause to be

173 blown, scattered, spilled, thrown or placed, or otherwise dispose of  
174 any litter (1) upon any public property in the state, (2) upon any public  
175 land in the state, (3) upon any private property in this state not owned  
176 by such person, (4) upon any private property in this state owned by  
177 such person, except litter consisting of grass clippings or other lawn or  
178 garden waste, or [(4)] (5) in the waters of this state, including, but not  
179 limited to, any public highway, public park, beach, campground, forest  
180 land, recreational area, mobile manufactured home park, highway,  
181 road, street or alley except: (A) When such property is designated by  
182 the state or any political subdivision thereof for the disposal of garbage  
183 and refuse, and such person is authorized to use such property for  
184 such purpose; or (B) into a litter receptacle in such a manner that the  
185 litter will be prevented from being carried away or deposited by the  
186 elements upon any part of said private or public property or waters.  
187 For the purposes of this subsection, "public land" means a state park,  
188 state forest or municipal park or any other publicly-owned land that is  
189 open to the public for active or passive recreation.

190 (b) (1) Any person who violates any provision of subsection (a) of  
191 this section shall be fined not more than one hundred ninety-nine  
192 dollars. One-half of any fine collected pursuant to this subsection shall  
193 be payable to the state and one-half of such fine shall be payable to the  
194 municipality in which the arrest was made unless the arrest was made  
195 by a conservation officer, special conservation officer or patrolman  
196 appointed by the Commissioner of Environmental Protection under  
197 authority of section 26-5, in which case one-half of such fine shall be  
198 payable to the Department of Environmental Protection.

199 (2) Whenever any person is convicted of a violation of subdivision  
200 (2) of subsection (a) of this section, the court shall, in addition to  
201 imposing the fine authorized by subdivision (1) of this subsection,  
202 impose a surcharge in an amount equal to fifty per cent of such fine.  
203 Any such surcharge collected pursuant to this subdivision shall be  
204 payable to the municipality in which the arrest was made unless the  
205 arrest was made by a conservation officer, special conservation officer  
206 or patrolman appointed by the Commissioner of Environmental

207 Protection under authority of section 26-5, in which case such  
208 surcharge shall be payable to the Department of Environmental  
209 Protection.

210 (3) When any such material or substances are thrown, blown,  
211 scattered or spilled from a vehicle, the operator thereof shall be  
212 deemed prima facie to have committed such offense.

213 (c) No person shall dump, as defined in subdivision (12) of section  
214 22a-248, as amended by this act, for financial gain, including the  
215 avoidance of disposal costs, any material originating from another  
216 property upon any public or private property in the state [or upon  
217 private property in this state not owned by such person] except when  
218 (1) such property is designated by the state or any political subdivision  
219 thereof for dumping or such property is a licensed facility for such  
220 purpose, and (2) such person is authorized to use such property. It  
221 shall not be a defense under this subsection that the dumping occurred  
222 with the permission of the property owner or on such person's own  
223 property. The commissioner or the municipality in which such  
224 dumping occurs may, upon complaint or on their own initiative,  
225 investigate any violation of this subsection. Material that has been  
226 placed at a location with an intent to leave it indefinitely at such  
227 location, or material that has not been removed from a location within  
228 forty-five days, shall be deemed discarded.

229 (d) No person shall dump, as defined in this subsection, for financial  
230 gain, including the avoidance of disposal costs, any material  
231 originating from another property upon any public or private property  
232 in the state [or upon private property in this state not owned by such  
233 person] except when (1) such property is designated by the state or  
234 any political subdivision thereof for dumping or such property is a  
235 licensed facility for such purpose, and (2) such person is authorized to  
236 use such property. The commissioner or the municipality in which  
237 such dumping occurs may, upon complaint or on their own initiative,  
238 investigate any violation of this subsection. It shall not be a defense  
239 under this subsection that the dumping occurred with the permission



240 of the property owner or on such person's own property. Material that  
241 has been placed at a location with an intent to leave it indefinitely at  
242 such location, or material that has not been removed from a location  
243 within forty-five days shall be deemed discarded unless (A) such  
244 material consists of material originating from an on-site residential  
245 activity that is being staged or stored for future reuse or for recycling  
246 at a permitted solid waste facility, as defined in section 22a-207; (B) the  
247 person who placed such material at the location has notified the  
248 commissioner of such placement; and (C) the commissioner has not  
249 prohibited such placement. As used in this subsection "dump" means  
250 to discard automobiles or automobile parts, large appliances, tires,  
251 bulky waste, hazardous waste, as defined in section 22a-115, or any  
252 other similar material.

253 (e) If the commissioner, after investigation, finds that there has been  
254 a violation of subsection (c) or (d) of this section, [he] the commissioner  
255 may issue an order pursuant to section 22a-225 to remove material  
256 dumped in violation of said subsection (c) or (d) to a solid waste  
257 facility approved by the commissioner.

258 (f) (1) If the chief elected official of a municipality, after  
259 investigation, finds that there has been a violation of subsection (c) or  
260 (d) of this section, [he] such official may send a notice to the owner of  
261 the property where such violation has occurred by certified mail,  
262 return receipt requested, to the address of record for property tax  
263 purposes. Such notice shall include (A) a reference to the statute  
264 alleged to have been violated; (B) a short and plain statement of the  
265 matter asserted or charged; (C) a demand that such property owner  
266 remove any material dumped in violation of subsection (c) or (d) of  
267 this section to a solid waste facility approved by the commissioner;  
268 and (D) a statement that such property owner has the right to a  
269 hearing to contest the chief elected official's finding and the date, time  
270 and place for the hearing. Such hearing shall be fixed for a date not  
271 later than ten days after the notice is mailed. The hearing shall be  
272 completed within fifteen days after such hearing commences and a  
273 decision shall be rendered within ten days of the completion of such

274 hearing.

275 (2) The chief elected official or [his] a designee shall hold a hearing  
276 upon the alleged violation unless such property owner fails to appear  
277 at the hearing. If such property owner fails to appear at the hearing or  
278 if, after the hearing, the chief elected official or [his] a designee finds  
279 that material has been dumped on such owner's property in violation  
280 of subsection (c) or (d) of this section and such property owner has not  
281 removed such material to a solid waste facility approved by the  
282 commissioner, the official may order that such property owner within  
283 thirty days remove such material to a solid waste facility approved by  
284 the commissioner. The official shall send a copy of any order issued  
285 pursuant to this subdivision by certified mail, return receipt requested,  
286 to such property owner. The person may appeal from an order of the  
287 chief elected official of a municipality under this subdivision in  
288 accordance with the provisions of section 8-8.

289 (3) If the owner fails to remove such material within thirty days  
290 from the date of the order issued by the chief elected official under  
291 subdivision (2) of this subsection, and no appeal of such order has  
292 been taken in accordance with section 8-8, the municipality may enter  
293 such property and remove such material to a solid waste facility  
294 approved by the commissioner.

295 (4) The provisions of this subsection shall not apply to any  
296 corporation subject to taxation under chapter 210.

297 (g) No property owner shall be ordered to remove dumped material  
298 by the commissioner or the chief elected official of a municipality  
299 pursuant to subsection (e) or (f) of this section unless (1) the  
300 commissioner or the chief elected official, as the case may be, finds that  
301 the property owner has dumped such material, or knowingly allowed  
302 another person to dump such material, in violation of subsection (c) or  
303 (d) of this section or (2) the commissioner or the chief elected official,  
304 as the case may be, has determined that there is no reasonable  
305 opportunity to compel the responsible party to remove the material or  
306 pay the costs of such removal.

307 (h) Any person who violates subsection (c) or (d) of this section shall  
308 be liable for a civil penalty of not less than one thousand dollars, nor  
309 more than ten thousand dollars for each day such violation continues.  
310 The Superior Court, in an action brought by the municipality or by the  
311 Attorney General on the request of the commissioner, shall have  
312 jurisdiction to issue an order to such person directing the removal of  
313 the material to a solid waste facility approved by the commissioner. If  
314 the court finds that the violation was wilful, it may impose a civil  
315 penalty equivalent to three times the cost of remediation of the  
316 violation in addition to other applicable civil penalties. The court may  
317 also order that a violator shall pay restitution to a landowner which  
318 the court finds has suffered damages as a result of the violation. All  
319 such actions shall have precedence in the order of trial as provided in  
320 section 52-191. Any such action by the Attorney General shall be  
321 brought in the superior court for the judicial district of Hartford. Any  
322 vehicle used by any person in violation of subsection (d) may be  
323 forfeited in accordance with section 22a-250a.

324 Sec. 5. Subsection (j) of section 22a-208a of the general statutes is  
325 repealed and the following is substituted in lieu thereof (*Effective*  
326 *October 1, 2009*):

327 (j) [The] Notwithstanding any other provision of this chapter, the  
328 Commissioner of Environmental Protection may issue an approval for  
329 a demonstration project for any activity regulated by the commissioner  
330 under this chapter to a municipality or municipal electric energy  
331 cooperative organized under chapter 101a, provided the commissioner  
332 determines that such demonstration project (1) is necessary to research,  
333 develop or promote methods and technologies of solid waste  
334 management which are consistent with the goals of the state solid  
335 waste management plan; (2) does not pose a significant risk to human  
336 health or the environment; and (3) is not inconsistent with the federal  
337 Water Pollution Control Act, the federal Rivers and Harbors Act, the  
338 federal Clean Air Act or the federal Resource Conservation and  
339 Recovery Act. An application for such approval shall be on a form  
340 prescribed by the commissioner, be accompanied by a fee of one

341 thousand dollars and shall provide such information as the  
 342 commissioner deems necessary. Any person applying for such  
 343 approval shall not commence the project prior to the commissioner's  
 344 written approval. The commissioner may impose conditions upon and  
 345 limit the term of such approval as deemed necessary to adequately  
 346 protect human health and the environment or to ensure project success  
 347 and such approval shall be valid for a period of not more than two  
 348 years. The commissioner may renew such approval. [provided the  
 349 total period of approval does not exceed five years.] The commissioner  
 350 may order summary suspension of any such approval in accordance  
 351 with subsection (c) of section 4-182. Notwithstanding the renewal  
 352 process, any person may seek, or the commissioner may require, that  
 353 the project obtain a general or individual permit pursuant to this  
 354 chapter.

355 Sec. 6. Section 22a-210 of the general statutes is repealed and the  
 356 following is substituted in lieu thereof (*Effective October 1, 2009*):

357 The commissioner may acquire necessary property and equipment,  
 358 or interests therein, and contract for the construction, including  
 359 planning and design, and leasing, operation and maintenance of  
 360 demonstration resource recovery systems or improved solid waste  
 361 facilities, or both, on a local, regional or state-wide basis by private  
 362 enterprise, a municipality, municipal electric energy cooperative  
 363 organized under chapter 101a or regional authority.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	22a-209f
Sec. 2	<i>October 1, 2009</i>	22a-241b
Sec. 3	<i>October 1, 2009</i>	22a-248
Sec. 4	<i>October 1, 2009</i>	22a-250
Sec. 5	<i>October 1, 2009</i>	22a-208a(j)
Sec. 6	<i>October 1, 2009</i>	22a-210

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Department of Environmental Protection	EQ - Potential Revenue Gain	Minimal	Minimal

Note: EQ=Environmental Quality Fund

#### **Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Various Municipalities	Potential Revenue Gain	Minimal	Minimal

### **Explanation**

The bill could result in a revenue gain to the Environmental Quality (EQ) fund<sup>1</sup> since it establishes a new application fee of not more than \$5,000 for those applying for individual authorizations of beneficial use of solid waste in a manufacturing process. Municipalities are exempt from this fee. The number of new applications that would be authorized cannot be anticipated at this time.

The EQ Fund balance for FY 08 was \$34.3 million. The EQ fund is used to fund a variety of activities in support of environmental quality programs, especially those related to permit issuance, monitoring, and enforcement and is funded mainly through permit and license fees.

The bill could also result in a minimal revenue gain to the General Fund and/or municipalities since it creates a fine of \$199 for disposing certain litter on one's own property. Under certain circumstances, the state would retain half (about \$100 of each violation) of the revenue

generated from this fine while the municipality in which the violation occurred would retain the other half of the revenue.

In FY 08, DEP collected \$1.9 million for the General Fund from fines and penalties. As of 3/16/09 (FY 09), there has been about \$990,000 deposited into the General Fund<sup>2</sup> from fines and penalties.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation, subject to the number of permits issued for the beneficial use of solid waste in a manufacturing process, and subject to the number of penalties imposed for littering.

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<sup>1</sup> sHB 6365, the budget bill as favorably reported by the Appropriations Committee, shifts EQ fund costs to the General Fund.

<sup>2</sup> Revenue collected from fines and penalties range from fiscal year to fiscal year; some years this revenue may be as high as \$5.0 million while other years this revenue is less than \$1.0 million.

**OLR Bill Analysis****sSB 995*****AN ACT CONCERNING BENEFICIAL REUSE, RECYCLING,  
ILLEGAL DUMPING AND MUNICIPAL DEMONSTRATION  
PROJECTS.*****SUMMARY:**

This bill makes it illegal to (1) dump items from one property onto another, including one's own, to avoid disposal costs, and (2) litter (except for grass clippings or other lawn or garden waste) on one's own property.

It allows the Department of Environmental Protection (DEP) commissioner to authorize beneficial uses of solid waste for which there is no individual or general permit.

It (1) requires both residential and non-residential solid waste generators to separate recyclables from solid waste by placing them in separate collection bins and (2) bars anyone from combining previously separated recyclables with solid waste.

By law, the DEP commissioner may approve demonstration projects for solid waste management activities she regulates. The bill specifically allows her to issue these approvals to municipalities and municipal electric energy cooperatives.

EFFECTIVE DATE: October 1, 2009

**ILLEGAL LITTERING AND DUMPING*****Littering on One's Own Property***

It is currently illegal to dispose of litter on public land, public property, state waters, or on private property other than property owned by the person discarding the litter. The bill makes it illegal to litter on one's own property. As under current law, a violator may be

fined up to \$199.

Under current law, litter includes grass clippings or other lawn or garden waste (see BACKGROUND). The bill exempts these items from its provisions, and thus allows, leaving grass clippings or other lawn or garden waste on one's own property.

### ***Dumping Items on One's Own Property***

By law, dumping means discarding (1) more than one cubic foot of litter at once or (2) furniture, garbage bags or their contents, or similar material. Material placed at a location with the intent to leave it there indefinitely or material not removed from a location in 45 days, is deemed discarded.

Under current law, it is illegal to dump material on public property, or on the private property of another, unless (1) the state or a political subdivision has designated the property for dumping, or it is licensed for that purpose, and (2) the person dumping the material is authorized to use the property.

The bill makes it illegal to dump, for financial gain, material originating on one property onto any other public or private property, including one's own, unless the above exceptions apply. Under the bill, financial gain includes avoiding the costs of properly disposing of the material.

By law, the person who dumped material cannot claim as a defense that he had the permission of the owner of the property where the dumping occurred. The bill also prohibits the person who dumped the material from claiming as a defense that he or she dumped the material on his or her own property.

### ***Dumping Discarded Cars, Car Parts, Large Appliances, Tires, Bulky Waste, or Hazardous Waste***

By law, it is illegal to dump discarded cars, car parts, large appliances, tires, bulky waste, and hazardous waste on public property, or on the private property of another, unless (1) the state or a



political subdivision designed the property for dumping, or it is licensed for that purpose, and (2) the person dumping the material is authorized to use the property.

The bill makes it illegal, unless the above exceptions apply, to dump this material on any public or private property, including one's own, if it originates on another site, and is dumped for financial gain, including avoiding disposal costs.

Under the bill, cars, car parts, large appliances, tires, and bulky and hazardous waste are deemed discarded, if they have been placed at a location with the intent to leave it there indefinitely or have not been removed from a location in 45 days, unless:

1. the material originated from an on-site residential activity and is being staged or stored for reuse or recycling at a permitted solid waste facility; and
2. the person who placed the material there notified the commissioner and she has not prohibited its placement.

By law, the person who dumped the material cannot claim as a defense that he or she had the permission of the owner of the property. The bill also prohibits the person from claiming as a defense that he or she dumped the material on his or her own property.

### ***Penalties for Illegal Dumping***

By law, unchanged by the bill, the DEP commissioner or a municipality may investigate alleged illegal dumping. A municipal chief elected official who finds a violation has occurred may notify the property owner of the violation by certified mail, return receipt requested. Notice must include (1) reference to the law alleged to have been violated, (2) a short and plain statement of the matter asserted or charged, (3) a demand that the property owner remove illegally dumped material to an approved solid waste facility, and (4) a statement that the property owner has the right to a hearing.

As under current law, violators are liable for a civil penalty of between \$1,000 and \$10,000 for each day of the violation. A Superior Court judge may order the violator to bring the illegally dumped material to a solid waste facility. The court may impose a penalty of three times the cost of cleaning up the dumped material if it finds the violation was willful and may order the violator to pay restitution to a landowner who has suffered damage because of the illegal dumping.

### **BENEFICIAL USE AUTHORIZATION**

Beneficial use is the use or reuse of processed municipal waste for a purpose that does not harm or threaten public health, safety, welfare, or the environment.

Under current law, the DEP commissioner may not issue a general permit for the reuse of hazardous waste (see BACKGROUND). The bill allows her to do so.

It allows her to issue an individual authorization for the processing or beneficial use of solid waste in manufacturing, or as an effective substitute for a commercial product, if the authorization (1) does not allow an activity for which DEP has issued an individual or general permit and (2) is consistent with the requirements of the federal Resource Conservation and Recovery Act. The commissioner must also find that the solid waste can be reused without harming or threatening harm to the public health, safety, or the environment.

The commissioner must establish guidelines to protect public health, safety, and the environment for these authorizations, and provide notice to the public on the DEP's website of the guidelines and subsequent revisions. She must provide the public the opportunity to submit written comments for 30 days after publishing the notice. She must post on the website a response to any comments she receives.

A person seeking an authorization must supply the information the commissioner requires on a DEP form. The commissioner may require the applicant to pay an application fee of up to \$5,000. The bill exempts municipalities from the fee.

***Procedures***

The bill requires, regardless of solid waste facility permitting laws and regulations, that certain procedures apply to the (1) issuance or renewal of an authorization or (2) modification of an authorization, if the modification is requested by the authorization holder.

The commissioner must publish, on the DEP website, notice of her intention to issue an authorization. This apparently also applies to authorization renewals or modifications. The notice must include:

1. the applicant's name and mailing address;
2. the address where the proposed activity would take place;
3. the application number;
4. the tentative decision on the application;
5. the type of authorization sought, referring to the applicable law or regulation;
6. a description of the location of the proposed activity and any affected natural resources;
7. the name, address, and telephone number of anyone representing the applicant from whom people may obtain copies of the application;
8. the length of time available for the public to submit comments to the commissioner; and
9. any additional information the commissioner believes necessary to comply with applicable state law or the federal Clean Air, Clean Water and Resource Conservation and Recovery acts.

There must be a 30-day written public comment period following publication of the notice. The commissioner must post on the DEP website her response to any comment received. She may approve or deny the authorization after reviewing the submitted information. Any

authorization she issues must clearly define the activity it covers, and may include conditions or requirements the commissioner believes appropriate, including (1) operating and maintenance requirements, (2) management practices, (3) reporting requirements, and (4) a specified term.

The commissioner may suspend or revoke an authorization. She may modify an authorization, according to the Uniform Administrative Procedures Act and DEP's rules of practice, if the authorization holder does not seek modification.

### **SEPARATING RECYCLABLES FROM SOLID WASTE**

Current law requires homeowners to separate recyclable items from other solid waste. It requires all others who generate solid waste to provide for this separation. The bill specifies that non-residential generators must separate recyclables and solid waste, as well as provide for their separation.

It requires people who generate both residential and non-residential solid waste to place recyclables and solid waste in separate collection receptacles. It prohibits anyone from combining previously separated recyclables with other solid waste.

It bars, starting October 1, 2009, anyone from contracting for the collection of solid waste without also providing for the collection of recyclables. Anyone offering collection services for either recyclables or solid waste must provide each customer with clear, written, instructions concerning the separation of recyclables and solid waste.

### **DEMONSTRATION PROJECTS FOR MUNICIPAL ELECTRIC ENERGY COOPERATIVES**

The law authorizes the DEP commissioner to approve demonstration projects for solid waste management activities she regulates if she makes certain findings. The bill specifically authorizes her, regardless of other solid waste management laws, to issue a demonstration project approval to a municipality or a municipal electric energy cooperative. She must make the same findings as under

current law. It appears municipalities are eligible for these approvals under current law.

By law, she may impose any conditions she believes necessary to adequately protect human health and the environment or to ensure the project's success. The initial approval is valid for up to two years, with a total approval limit of five years. The bill allows the commissioner to renew the approval, but eliminates the five-year limit, instead authorizing the commissioner to set a term limit she believes is necessary to protect human health and the environment or ensure the success of the project.

By law, the commissioner may acquire needed property and equipment, and contract to build, plan, design, lease, operate, and maintain demonstration resources recovery systems or improved solid waste facilities on a local, regional, or statewide basis by private enterprise, a municipality, or regional authority. The bill also allows her to do this for a municipal electric energy cooperative.

## **BACKGROUND**

### ***Litter***

By law, litter means any discarded, used, or unconsumed substance or waste material, whether made of aluminum, glass, plastic, rubber, paper, or other natural or synthetic material, or any combination. It includes any bottle, jar, or can; or any top, cap or detachable tab of any bottle, jar, or can; any unlighted cigarette, cigar, match or any flaming or glowing material; any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste; newspaper, or magazines, glass, metal, plastic or paper containers; or other packaging or construction material that has not been deposited in a litter receptacle (CGS § 22a-248 (4)).

### ***Municipal Electric Energy Cooperative***

By law, a municipal electric energy cooperative means a separate legal entity created by concurrent resolutions of two or more municipal electric utilities to acquire, build, reconstruct, operate,

repair, extend, or improve electric power generation or transmission facilities, or acquire an interest therein or any capacity thereof (CGS § 7-233b).

### ***Federal Environmental Laws***

The Water Pollution Control Act, or Clean Water Act (33 USC § 1251) and the Clean Air Act (42 USC § 7401) regulate the discharge of pollutants to water and air, respectively. The Resource Conservation and Recovery Act (RCRA) (42 USC § 6901) is the primary federal law governing the disposal of solid and hazardous waste.

### ***Legislative History***

On April 14 the Senate referred the bill (File 464) to the Judiciary Committee, which on April 21 favorably reported a substitute that excludes grass clippings and other lawn and garden waste from the ban on littering on one's own property.

### ***Related Bill***

HB 6554 (File 455), reported favorably by the Environment Committee, prohibits trash collectors from requiring residents to contract for both the collection of solid waste and recyclables in certain instances.

## **COMMITTEE ACTION**

### **Environment Committee**

Joint Favorable Substitute

Yea    30    Nay   0    (03/20/2009)

### **Judiciary Committee**

Joint Favorable Substitute

Yea    39    Nay   0    (04/21/2009)